


IN THE SUPREME COURT OF THE STATE OF NEVADA

ISAIAS ESTRADA HERNANDEZ,  
Appellant,  
vs.  
WARDEN, NEVADA STATE PRISON,  
CRAIG FARWELL AND THE STATE OF  
NEVADA,  
Respondents.

No. 49911

**FILED**

JAN 09 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On February 25, 2003, appellant Isaias Estrada Hernandez was convicted, pursuant to a guilty plea, of one count of level-three trafficking in a controlled substance. The district court sentenced Hernandez to serve a prison term of 10 to 25 years. Hernandez did not file a direct appeal.

On January 30, 2004, Hernandez filed in the district court a proper person petition for a writ of habeas corpus and a post-conviction motion to withdraw the guilty plea. The district court appointed counsel to represent Hernandez, and counsel filed a supplement to the petition. The State filed a motion for partial dismissal of the supplemental petition, and Hernandez filed an opposition to the State's motion. The district court entered an ordering dismissing some of Hernandez's claims. After conducting an evidentiary hearing on Hernandez's remaining claims, the district court denied the petition. Hernandez filed this timely appeal.

Hernandez contends that the district court erred in rejecting his claims of ineffective assistance of counsel. Specifically, Hernandez contends that defense counsel was ineffective for failing to: (1) investigate to uncover exculpatory evidence; (2) adequately explain the requirements of substantial assistance pursuant to NRS 453.3405; (3) file a presentence motion to withdraw the guilty plea; and (4) file a direct appeal on Hernandez's behalf. Hernandez also contends that his guilty plea is invalid because he was misadvised by court interpreters and defense counsel and, when he entered the plea, he believed he would receive probation due to the substantial assistance he provided to law enforcement officers.

The district court found that Hernandez's guilty plea was knowing, voluntary and intelligent, and that defense counsel was not ineffective under the standard set forth in Strickland v. Washington.<sup>1</sup> In particular, the district court found that Hernandez was fully advised of the requirements of NRS 453.3405, was correctly advised with respect to the consequences of the guilty plea, and was not deprived of his right to a direct appeal. Additionally, the district court found that defense counsel's performance was not deficient with respect to pretrial investigation or the entry of the guilty plea. The district court's factual findings regarding the validity of a guilty plea and claims of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>2</sup> Hernandez has not

---

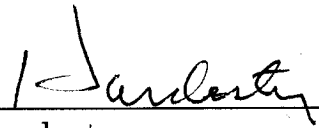
<sup>1</sup>466 U.S. 668 (1984).

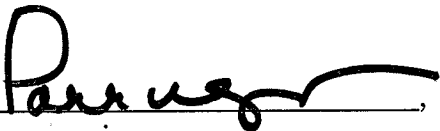
<sup>2</sup>See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

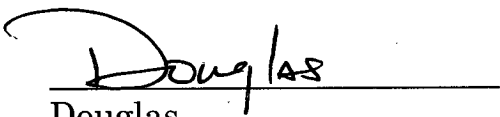
demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Hernandez has not demonstrated that the district court erred as a matter of law.<sup>3</sup>

Having considered Hernandez's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Jerome Polaha, District Judge  
Mary Lou Wilson  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

---

<sup>3</sup>Hernandez also argues that he was denied his constitutional right to confrontation because the Department of Homeland Security would not authorize a federal agent to testify at the post-conviction hearing. Hernandez failed to raise this argument in the proceedings below, and we conclude that Hernandez has failed to show plain or constitutional error occurred. See generally Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (failure to object generally precludes appellate consideration).